HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.163 of 2007
Date of decision : 14.3.2007

Bhakra Beas Management Board .....Appellant

versus

Smt.Gurmej Kaur and others .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Sachin Mittal, Advocate for the appellant.
Mr.V.M.Gupta, Advocate for respondent Nos.6 & 7.

* * *

JUDGMENT

HEMANT GUPTA, J.

The present appeal by defendant No.2 is directed against the judgment and decree passed by the learned First Appellate Court, whereby the plaintiff-respondents were awarded Rs.3,00,000/- as compensation. The appellant and the Punjab State Electricity Board, defendant Nos.3 & 4 were made liable to pay such compensation jointly and severally.

Jaswinder Singh @ Kala, aged 22 years, suffered injuries on account of electrocution on 11.10.1993 when an electricity wire crossing near the Varandah of his house fell on him, which led to fire. The said fire burnt the clothes, mouth, arms, chest, left leg and other parts of the body of Jaswinder Singh. On account of the burn injuries received, Jaswinder Singh died in hospital on 19.10.1993. On account of death of

Jaswinder Singh, his parents, minor brother and sisters filed a suit as indigent persons to claim compensation of Rs.5,00,000/-.

The learned trial Court returned a finding that a heavy electric wire passing over the house of the plaintiffs, fell on the cable wire, due to which son of the plaintiff Nos.1 & 2 suffered burn injuries and he died later on. It was found that it was duty of the defendants to check the wires and it was not the duty of the plaintiffs to see looseness of the wires. Consequently, both set of defendants, i.e. present appellant and the Punjab State Electricity Board, defendant Nos.3 & 4 were found liable for payment of compensation jointly and severally. Both set of defendants filed separate appeals before the First Appellate Court. The First Appellate Court affirmed the finding of the learned trial Court. The First Appellate Court found that 132 KVA line is required to be maintained by PSEB, but 220 KVA or above electric lines are required to be maintained by the appellant. The accident has occurred on account of firstly snapping of 220 KVA line and the said line having fell on 132 KVA line which led to death of Jaswinder Singh and thus, maintained the finding of negligence and liability of the appellant.

Learned counsel for the appellant has vehemently argued that the finding that 220 KVA electric line fell on the 132 KVA electric line maintained by the PSEB is factually incorrect as the line of 220 KVA does not pass through that locality. It is pointed out that in fact, case of the defendant Nos.3 & 4 is that use of the electricity by *Kundi* connection led to an accident. Though the stand of the plaintiffs is that the electric

wire maintained by the appellant fell on the wire maintained by the PSEB, but DW-2 U.S.Sarao, Senior Executive Engineer, Distribution, PSEB, Phagwara has stated that there was a flash in 132 KVA line on account of attempt to avail *Kundi* connection which led to breaking of the wire. Therefore, the finding recorded by the Courts below suffers from misreading of the evidence.

On the other hand, learned counsel for defendant No.3 & 4 has vehemently argued that in view of the pleadings, evidence of the plaintiffs alongwith the line of cross examination adopted by the appellant, the finding recorded by the Courts below are the findings of fact, therefore, warrants no interference in second appeal.

I have heard the learned counsel for the parties on the following substantial question of law:-

> "Whether the Courts below have misread the evidence to return a finding that the appellant was negligent in causing the accident?

No doubt, the plaintiffs have pleaded that the main electric wire maintained by the BBMB fell on the electric line maintained by the PSEB, but the fact remains that DW-2, U.S.Sarao, the then Senior Executive Engineer, Distribution, PSEB, Phagwara has deposed to the effect that a message was sent to the 220 KVA Sub Station, Jamalpur, PSEB, Ludhiana by the S.D.O., Transmission Lines, Phagwara, regarding break down on circuit No.1 which took place on 11.10.1993 on 132 KVA Jamalpur Goraya Double Circuit line. It was stated in the message that in

between Tower No.2 & 3 of the line there was big flash which occurred due to the wrong act of one Kala, resident of House No.720, LIG Flat, Housing Board Colony, Jamalpur, Ludhiana, who threw wire on 132 KVA line and due to that flash took place and he himself was electrocuted. The relevant extract from his affidavit in examination in-chief reads as under:-

> "On 12.10.1993, a massage was sent to S.S.C.220 K.V.A. Sub Station, Jamalput, P.S.E.B., Ludhiana by S.D.O. T.L. Phagwara regarding break down on Circuit No.1 took place on 11.10.1993 on 132 K.V. Jamalpur Gorayan Double Circuit Line and it was mentioned in the message that Patrolling of the line was done and in between Tower No.2 and 3 of the line, there was big flash, which occurred due to wrongful act of one Kala, resident of H.No.720, L.I.G. Flat, Housing Board Colony, Jamalpur, Ludhiana, who throw wire on 132 K.V. Line and due to that flash took place and he himself was electrocuted. On 12.10.1993, I personally visited Housing Board Colony, Jamalpur and visited the site and inspected the same ....."

He has also produced his inspection report Exhibit DW-2/1 of the said occurrence, submitted on 12.10.1993, next day of the occurrence. The report Exhibit DW-2/1 is to the effect that one Jaswinder Singh @ Kala threw a wire on the line which led to the fire. There is no mention in the aforesaid report regarding snapping of any 220 KVA electric line maintained by the appellant. The evidence of defendant

Nos.3 & 4 itself is to the effect that 132 KVA line was snapped on account of attempt by Jaswinder Singh @ Kala to establish connection. It is not understood that how the Courts below could return a finding that there was a snapping of transmission line maintained by the appellant. The evidence of the witnesses of the plaintiffs is not material in respect of manner of accident. It was for the defendants to prove the authorities responsible for the maintenance of the electric line. There is no evidence led by defendant Nos.3 & 4 to the effect that line of 220 KVA was snapped and that such line fell on 132 KVA line being maintained by the said defendants.

In view of the above, the finding recorded by the Courts below is not based on evidence and is thus not sustainable.

Consequently, the judgment and decree passed by the Courts below is set aside qua the appellant and it is held that defendant Nos.3 & 4 are liable to make the payment of the entire compensation to the plaintiffs.

The appeal stands allowed accordingly.

(HEMANT GUPTA)
JUDGE

March 14, 2007
**mohinder*